



**Rule and Interpretive/Policy Statement Review Checklist**  
(This form must be filled out electronically.)

**This form is to be used when the current version of the rule(s) has/have not previously been reviewed. When reviewing an interpretive or policy statement, this document is to be used only if the review of the statement is not in conjunction with the review of a rule.**

All responses should be **bolded**.

Document(s) Reviewed (include title): **WAC 458-20-169 (Nonprofit organizations)**

Date last adopted/issued: **April 16, 2001**

Reviewer: **Sue Goldstein**

Date review completed: **March 5, 2004**

Briefly explain the subject matter of the document(s): **This rule explains the B&O, retail sales, and use tax reporting responsibilities of nonprofit organizations, and the exemptions and deductions specifically provided to the fundraising and business activities of certain nonprofit organizations.**

Type an "X" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

**1. Public requests for review:**

| YES | NO       |  |
|-----|----------|--|
|     | <b>X</b> | Is this document being reviewed at this time because of a public (e.g., taxpayer or business association) request? |

If "yes," provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request.

**2. Need:**

| YES      | NO       |  |
|----------|----------|--|
| <b>X</b> |          | Is the document necessary to comply with the statutes that authorize it? (E.g., Is it necessary to comply with or clarify the application of the statutes that are being implemented? Does it provide detailed information not found in the statutes?) |
|          | <b>X</b> | Is the information provided in the document so obsolete that it is of little value, warranting the repeal or revision of the document?   |
|          | <b>X</b> | Have the laws changed so that the document should be revised or repealed? (If the response is "yes" that the document should be repealed, explain and identify the statutes the rule implemented, and skip to Section 10.)                             |
| <b>X</b> |          | Is the document necessary to protect or safeguard the health, welfare (budget  |



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|  |  | levels necessary to provide services to the citizens of the state of Washington), or safety of Washington's citizens? (If the response is "no", the recommendation must be to repeal the document.) |
|--|--|---|

Please explain.

**This rule is necessary to assist nonprofit organizations in determining their tax liability by explaining certain exemptions and deductions specifically provided to the fun-raising and business activities of those organizations. The rule also directs nonprofit organizations to other rules explaining exemptions and deductions that may be relevant to specific activities of nonprofit organizations. Rule 169 is not obsolete and is currently providing useful information.**

### 3. Related interpretive/policy statements, court decisions, BTA decisions, and WTDs:

Complete Subsection (a) only if reviewing a rule. Subsection (b) should be completed only if the subject of the review is an interpretive or policy statement. Excise Tax Advisories (ETAs), Property Tax Advisories and Bulletins (PTAs/PTBs), and Interim Audit Guidelines (IAGs) are considered interpretive and/or policy statements.

(a)

| YES | NO |   |
|-----|----|---|
|     | X  | Are there any interpretive or policy statements that should be incorporated into this rule? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)  |
|     | X  | Are there any interpretive or policy statements that should be cancelled because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.) |
|     | X  | Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) that provide information that should be incorporated into this rule?   |
|     | X  | Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the rule?  |

(b)

| YES | NO |   |
|-----|----|---|
|     |    | Should this interpretive or policy statement be incorporated into a rule?   |
|     |    | Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) that affect the information now provided in this document? |
|     |    | Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the document?            |

If the answer is "yes" to any of the questions in (a) or (b) above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.



#### 4. Clarity and Effectiveness:

| YES | NO |  |
|-----|----|--|
| X   |    | Is the document written and organized in a clear and concise manner?   |
|     | X  | Are citations to other rules, laws, or other authority accurate? (If no, identify the incorrect citation below and provide the correct citation.)  |
| X   |    | Is the document providing the result(s) that it was originally designed to achieve? (E.g., does it reduce the need for taxpayers to search multiple rules or statutes to determine their tax-reporting responsibilities or help ensure that the tax law and/or exemptions are consistently applied?) |
|     | X  | Do changes in industry practices warrant repealing or revising this document?  |
|     | X  | Do administrative changes within the Department warrant repealing or revising this document?   |

Please explain.

**This document is generally written in a clear manner. However, some small corrections would make the rule more accurate. Also, the examples in this rule are interspersed within the rule. The rule would be more useful if there were bolded captions to set the examples apart from the text of the rule and if the examples provided more explanation for the results given. For example, how does the exemption for fundraising sales of ice cream bars at a county fair booth under subsection (5)(f)(ii)(C) differ from the nonexempt fundraising sales of food at concession stands at a community nonprofit theater troupe production under subsection (5)(f)(iv)(C)?**

**Subsection (4)(c)(i), which discusses the use tax exemption for donated items, may require some revision, depending on current legislation (Substitute Senate Bill 6115 or House Bill 2403, use tax exemption for donated recreation and amusements services). The current subsection (4)(c)(i) refers to the use tax exemption for "property donated to a nonprofit charitable organization." Under the current law, it would be more correct to state it as "tangible personal property." In addition, if Substitute Senate Bill 6115 or House Bill 2403 becomes law, this subsection should address the use tax exemption for recreation and amusement services donated by or to nonprofit organizations that SSB 6115 /HB 2403 authorizes.**

**In the second paragraph of subsection (5)(b)(iii), two rule numbers and their descriptions are transposed. The caption for WAC 458-16-210 is "Nonprofit organizations or associations organized and conducted for nonsectarian purposes." The caption for WAC 458-16-220 is "Church camps."**

#### 5. Intent and Statutory Authority:

| YES | NO |  |
|-----|----|--|
| X   |    | Does the Department have sufficient authority <b>to adopt</b> this document? (Cite the statutory authority in the explanation below.)  |
| X   |    | Is the document consistent with the legislative intent of the statute(s) that authorize it? (I.e., is the information provided in the document consistent with the statute(s) that it was designed <b>to implement</b> ?) If "no," identify the specific statute and explain below. List all statutes being implemented in |



|  |          |  |
|--|----------|--|
|  |          | Section 9, below.)   |
|  | <b>X</b> | Is there a need to recommend legislative changes to the statute(s) being implemented by this document? |

Please explain.

**RCW 82.32.300 and 82.01.060(2) authorize and direct the Department of Revenue to adopt and publish rules.**

**6. Coordination:** Agencies should consult with and coordinate with other governmental entities that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.

| <b>YES</b> | <b>NO</b> |   |
|------------|-----------|---|
|            | <b>X</b>  | Could consultation and coordination with other governmental entities and/or state agencies eliminate or reduce duplication and inconsistency? |

Please explain.

**The Department of Revenue has the authority to administer the B&O, sales, and use tax exemptions for nonprofits.**

**7. Cost:** When responding, consider only the costs imposed by the document being reviewed and not by the statute.

| <b>YES</b> | <b>NO</b> |  |
|------------|-----------|--|
|            | <b>X</b>  | Have the qualitative and quantitative benefits of the document been considered in relation to its costs? (Answer "yes" only if a Cost Benefit Analysis was completed when the rule was last adopted or revised.) |

Please explain.

**8. Fairness:** When responding, consider only the impacts imposed by the document being reviewed and not by the statute.

| <b>YES</b> | <b>NO</b> |   |
|------------|-----------|---|
| <b>X</b>   |           | Does the document result in equitable treatment of those required to comply with it?  |
|            | <b>X</b>  | Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community?   |
|            | <b>X</b>  | Should the document be strengthened to provide additional protection to correct any disproportionate impact on any particular segment of the regulated community? |



Please explain.

**The information in Rule 169 applies equally to all similarly situated taxpayers.**

**9. LISTING OF DOCUMENTS REVIEWED:** Use “bullets” with any lists, and include documents discussed above. Citations to statutes, interpretive or policy statements, and similar documents should include titles. Citations to Attorney General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).

Statute(s) Implemented:

- **RCW 82.04.327 (Exemptions--Adult family homes)**
- **RCW 82.04.339 (Exemptions--Day care provided by churches)**
- **RCW 82.04.3395 (Exemptions--Child care resource and referral services by nonprofit organizations)**
- **RCW 82.04.363 (Exemptions--Camp or conference center--Items sold or furnished by nonprofit organization)**
- **RCW 82.04.3651 (Exemptions--Amounts received by nonprofit organizations for fund-raising activities)**
- **RCW 82.04.367 (Exemptions--Nonprofit organizations that are guarantee agencies, issue debt, or provide guarantees for student loans)**
- **RCW 82.04.368 (Exemptions--Nonprofit organizations--Credit and debt services)**
- **RCW 82.04.385 (Exemptions--Operation of sheltered workshops)**
- **RCW 82.04.4297 (Deductions--Compensation from public entities for health or social welfare services--Exception)**
- **RCW 82.08.02573 (Exemptions--Sales by a nonprofit organization for fund-raising activities)**
- **RCW 82.08.830 (Exemptions--Sales at camp or conference center by nonprofit organization)**
- **82.12.02595 (Exemptions--Use of donated tangible personal property by nonprofit organization or governmental entity or for purpose donated--Use of related property)**
- **RCW 82.12.02915 (Exemptions--Use of items by health or social welfare organizations for alternative housing for youth in crisis)**

Interpretive and/or Policy Statements (e.g., ETAs, PTAs, IAGs):

Court Decisions:

Board of Tax Appeals Decisions (BTAs):

Appeal Division Decisions (WTDs):

Attorney General Opinions (AGOs):

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):



- Chapter 18.100 RCW (Professional service corporations)
- Chapter 24.03 RCW (Washington nonprofit corporation act)
- Chapter 24.12 RCW (Corporations sole)
- RCW 27.12.010 (Definitions)
- RCW 82.04.070 ("Gross proceeds of sales")
- RCW 82.04.080 ("Gross income of the business")
- RCW 82.04.220 (Business and occupation tax imposed)
- RCW 84.36.020 (Cemeteries, churches, parsonages, convents, and grounds)
- RCW 84.36.030 (Property used for character building, benevolent, protective or rehabilitative social services--Camp facilities--Veteran or relief organization owned property--Property of nonprofit organizations that issue debt for student loans or that are guarantee agencies)
- Special notice, "Nonprofit fundraising," January 5, 2004

#### 10. Review Recommendation:

- \_\_\_\_\_ Amend
- \_\_\_\_\_ Repeal/Cancel (Appropriate when action is not conditioned upon another rule-making action or issuance of an interpretive or policy statement.)
- X   Leave as is (Appropriate even if the recommendation is to incorporate the current information into another rule.)
- \_\_\_\_\_ Begin the rule-making process for possible revision. (Applies only when the Department has received a petition to revise a rule.)

**Explanation of recommendation:** Provide a brief summary of your recommendation. If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, and court decisions); or
- Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, and court decisions).

**There is no need to revise this rule at this time. However, when the rule is next revised, the Department should correct the rules and names that are switched around (noted earlier). Examples could be improved by using bolded captions.**

**Also, the examples should be reviewed and rewritten to more clearly explain the differences in tax treatment between similar situations. If Substitute Senate Bill 6115 or House Bill 2403 (2004) become law, an example should be included that illustrates the use tax exemption for donation of recreation or amusement services (rounds of golf) to or by nonprofit organizations or state or local governmental entities.**



**11. Manager action:** Date: April 22, 2004

AL Reviewed and accepted recommendation

Amendment priority:

- 1
- 2
- 3
- 4